

In Re: Thomas J. McLoughlin  
Case No. 11-12517-ANV  
CHAPTER 7

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

IN RE:  
Thomas J. McLoughlin

Wells Fargo Bank, N.A.,

VS.

Thomas J. McLoughlin

CHAPTER 7  
CASE NO. 11-12517-ANV

MOTION FOR RELIEF FROM STAY AND MEMORANDUM IN SUPPORT THEREOF

To the Honorable Arthur N. Votolato:

Wells Fargo Bank, N.A., your moving party in the within Motion, respectfully represents:

1. The movant has a mailing address of 1 Home Campus, Bankruptcy Payment Processing, MAC# x2501-01D, Des Moines, IA 50328.
2. The debtor, Thomas J. McLoughlin, has a mailing address of 85 Second Avenue, Cranston, RI 02910.
3. On June 23, 2011, the debtor filed a petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Rhode Island.
4. The movant is the holder of a first mortgage on real estate in the original amount of \$208,586.00 given by Thomas J. McLoughlin and Donna L. McLoughlin to Mortgage Electronic Registration Systems, Inc. on or about January 16, 2009. Said mortgage is recorded with the Cranston Land Records at Book 3981, Page 260 and covers the premises located at 85 Second Avenue, Cranston, RI 02910.

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5. Said mortgage secures a note given by Thomas J. McLoughlin to RBS Citizens, N.A. in the original amount of \$208,586.00.
6. The mortgage was assigned by Mortgage Electronic Registration Systems, Inc. to the movant.
7. As of September 16, 2011, approximately \$203,117.73 in principal, interest, late fees and other charges was due with regard to the note and mortgage. Additionally, reasonable attorney's fees and costs have accrued as a result of this motion.
8. There are no other known encumbrances on the property.
9. According to the debtor's schedules, the fair market value of the subject property is \$190,000.00.
10. The note and mortgage are in default for the August 1, 2011 payment and all payments thereafter, plus reasonable attorney's fees and costs and other charges incurred by the movant.
11. The movant seeks relief from stay as a secured creditor to enforce its rights under its loan documents and applicable law. In support thereof, the movant states that it is entitled to relief:
  - I. Pursuant to 11 U.S.C. 362 (d)(1) for cause on the basis that the debtor is in default on said contractual obligations, the primary purpose of a Chapter 7 proceeding is to liquidate the assets of the debtor, there is no equity and the trustee has no motivation to liquidate the subject property;
  - II. Pursuant to 11 U.S.C. 362 (d)(2) on the basis that there is no equity in the subject property and, there being no reorganization in prospect, the property is not necessary for effective reorganization.

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WHEREFORE, the movant prays that it, and its successors and/or assigns, be granted relief from the automatic stay for the purpose of: (i) exercising its rights under its agreements with the debtor and under applicable law, including, without limitation, taking possession of the mortgaged premises and/or foreclosing or accepting a deed in lieu of foreclosure of its mortgage on said premises, and bringing such actions, including, without limitation, eviction proceedings, as are permissible by law; (ii) the Court waive the provisions of F.R.B.P. 4001 (a)(3); and (iii) the Court order such other and further relief as may be just and proper.

Respectfully submitted,

Wells Fargo Bank, N.A.,  
By its Attorney

/s/ Elizabeth A. Lonardo

Elizabeth A. Lonardo, Esquire  
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September 16 , 2011

**Within fourteen (14) days after service as evidenced by the certification and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Bankruptcy Court Clerk's Office, 380 Westminster Mall, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed within the time allowed herein, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.**

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CERTIFICATE OF SERVICE

I, Elizabeth A. Lonardo, Esquire, state that on September 16, 2011, I electronically filed the foregoing Motion for Relief and Proposed Order with the United States Bankruptcy Court for the District of Rhode Island using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

Gary L. Donahue, Esquire, Assistant U.S. Trustee  
Stacy B. Ferrara, Esquire, Chapter 7 Trustee  
Stephen P. Levesque, Esquire for the Debtor

I certify that I have mailed by first class mail, postage prepaid the documents electronically filed with the Court on the following non CM/ECF participants:

/s/ Elizabeth A. Lonardo  
Elizabeth A. Lonardo, Esquire  
RI# 7714

Thomas J. McLoughlin  
85 Second Avenue  
Cranston, RI 02910

Donna L. McLoughlin  
85 Second Avenue  
Cranston, RI 02910

HSBC Bank Nevada, N.A.  
Bass & Associates, P.C.  
3936 E. Ft. Lowell Road, Suite #200  
Tucson, AZ 85712

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